

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION

SYLVIA JANE RODARTE,

Plaintiff

v.

WAL-MART ASSOCIATES, INC.,

and

WAL-MART STORES EAST, L.P.

Defendants.

CASE NO: 6:12-cv-00055-NKM

PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

COMES NOW the plaintiff, Sylvia Jane Rodarte, by counsel, and in response to the Defendants' Motion to Dismiss, filed with the court on October 16, 2012, states as follows:

1. This matter was filed by the plaintiff in the Circuit Court for the County of Rockbridge, Virginia on September 12, 2012, alleging facts that gave rise to claims specified by the plaintiff as malicious prosecution, wrongful imprisonment, intentional infliction of emotional distress, abuse of process and defamation, as well as alleging that the claims, if proven would entitle the plaintiff to punitive damages.
2. The defendants filed a Notice of Removal on October 9, 2012, availing themselves of federal jurisdiction based on diversity of citizenship.
3. Subsequently, defendants filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), alleging that the plaintiff had failed to state a claim upon which relief could be granted.
3. This matter having been removed to the U.S. District Court, federal procedural pleading rules apply, rather than Virginia state rules.
4. The plaintiff has stated her claims sufficiently to illuminate the nature of the claims and to allow defendants to respond, and has stated a claim that is plausible on its face, satisfying the standards of Fed. R. Civ. P. 8.



5. For these reasons and for the reasons set forth more fully in the Brief in Support of Plaintiff's Response to Motion to Dismiss filed herewith and incorporated by reference herein.
6. In the alternative, should the Court find that any claim filed by the plaintiff does not adequately state a claim upon which relief could be granted, plaintiff hereby moves the Court for leave to amend her complaint pursuant to Fed. R. Civ. P 15(a)(2).

SYLVIA JANE RODARTE

By /s/ Brian J. McNamara  
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CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of November, 2012, I electronically filed Plaintiff's Response to Defendants' Motion to Dismiss and Plaintiff's Brief in Support of Plaintiff's Response to Defendants' Motion to Dismiss using the CM/ECF system, which will send a notice and a true copy thereof electronically to:

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/s/Brian J. McNamara  
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